IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.Rev.Pet.No. 735 of 2005()

CRA.1059/2004 of SESSIONS COURT, ERNAKULAM
CC.863/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED.

DENNIS AUSTINE, S/O.P.T.AUGUSTINE,
PALLIPPARAMBIL HOUSE,THOPPUMPADY, KOCHI 5.

BY ADV. SRI.P.S.SUNIL
SMT.JULI PETER

RESPONDENTS: COMPLAINANT AND STATE.

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1. PALLATH FINANCE & CHITS (P) LTD,.,
PALLINADA, PALARIVATTOM, REP. BY THE
MANAGING DIRECTOR, P.A. ANTONY.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.SAIGI JACOB PALATTY
SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.A. NO. 3737/2005 IN CRL.R.P. NO. 735/2005

DISMISSED

16.10.2007 SD/- V. RAMKUMAR, JUDGE.

V.RAMKUMAR, J.

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Crl.R.P. No.735 OF 2005

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Dated this the 16th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.863 of 2000 on the file of the J.F.C.M-II, Ernakulam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner raised the following further contentions in support of the revision:-

What has been entrusted by the revision petitioner with the complainant was only a signed blank cheque. The complainant examined as PW1 would say that the cheque, as it is found now, was left in his office by the accused. If what was entrusted was only signed blank cheque, what is produced before the court is a cheuqe which has

been filled up for a sum of Rs.1,42,000/-. The accused examined DW2 Pyari who was the Manager of the complainant's establishment. She is admitted that the writings in Ext.P1 cheque are in her handwriting. This means that the signed blank cheque which was entrusted with PW1 had been materially altered within the meaning of Section 87 of the N.I.Act since PW1 did not have the implied authority to fill up the cheque.

5. Both the courts did not accept the above version of the petitioner. Even though DW2 admitted her handwriting in Ext.P1 cheuque, she stated further in cross examination that it was on the instructions of the accused himself that she filled up the cheque. If so, the writings in Ext.P1 will have to be attributed to accused only and Ext.P1 cannot be treated as vitiated by material alteration as contended by the defence.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3)

Cr.P.C. a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) within **four months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

8. Amount, if any, paid by the revision petitioner pursuant to the orders, passed by the lower appellate court shall be refunded to the petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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